

III. Procedural Safeguards and Access

Procedural Safeguards and Access: ADEM would serve as a model agency implementing a nondiscrimination program that effectively and efficiently addresses discrimination issues at the state level and ensures access to ADEM programs and activities.

A. Non-Discrimination Procedural Safeguards

ADEM and EPA will continue to work together to update ADEM's nondiscrimination program, ensure that it is being appropriately implemented, that it provides a robust opportunity for ADEM to address nondiscrimination issues and is accessible to all of its citizens.

ADEM will continue to review its non-discrimination procedural safeguards and will take steps to address outstanding issues within the timeframes set forth below.

1. Notice of Non-Discrimination under the Federal Non-Discrimination Statutes

- a. ADEM will prominently post an updated notice of non-discrimination on the ADEM website and update the statement in general publications that are distributed to the public. In order to ensure effective communication with the public, ADEM will ensure that its updated notice of non-discrimination is accessible to limited-English proficient individuals and individuals with disabilities.
- b. The updated notice will contain, at a minimum, the following statements:
 - i. ADEM is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination statutes).
 - ii. If you have any questions about this notice or any of ADEM's non-discrimination programs, policies or procedures, you may contact:
 1. [Insert name and title of Non-Discrimination Coordinator]
 2. ADEM Address Line 1
 3. Address Line 2
 4. Address Line 3
 5. Phone number

6. Email address

iii. If you believe that you have been discriminated against with respect to a ADEM program or activity, you may contact the [insert title of Non-Discrimination Coordinator] identified above or visit our website at [insert] to learn how and where to file a complaint of discrimination.

c. Within 30 days of the effective date of this Agreement ADEM will publish its notice of non-discrimination on its website as specified above.

2. *Grievance Procedures for Complaints filed under the Federal Non-Discrimination Statutes*

a. ADEM will ensure that it has widely and prominently published in print and online an updated set of grievance procedures to process discrimination complaints filed under federal non-discrimination statutes. ADEM will review the grievance procedures on an annual basis (for both printed and online materials), and revise as necessary, to allow for prompt and appropriate handling of discrimination complaints.

b. The updated grievance procedures will at a minimum address the following:

- i. Clearly identify the Non-Discriminator Coordinator, including contact information;
- ii. Explain the role of the Non-Discrimination Coordinator relative to the coordination and oversight of the grievance procedures;
- iii. Explain that an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination statutes will be conducted. (Whether EPA considers complaint investigations and resolutions to be “prompt” will vary depending on the complexity of the investigation and the severity and extent of the alleged discrimination. For example, the investigation and resolution of a complaint involving multiple allegations and multiple complainants likely would take longer than one involving a single allegation of discrimination and a single complainant).
- iv. State that the preponderance of the evidence standard will be applied during the analysis of the complaint;
- v. Contain assurances that retaliation is prohibited and that claims of retaliation will be handled promptly;

- c. Within 90 days of the effective date of this Agreement, ADEM will forward to EPA a final draft of its updated grievance procedures for review. EPA will review the draft procedures and provide any comments within 60 days of receipt.

3. *Designation of a Non-Discrimination Coordinator*

- a. ADEM will retain at least one Non-Discrimination Coordinator to ensure ADEM's compliance with the Federal non-discrimination statutes.
- b. ADEM will ensure that its notice and grievance procedures that it widely publishes in print and online include the name, title, email address, telephone number, and other contact information of the Non-Discrimination Coordinator. ADEM will explain the responsibilities of the Non-Discrimination Coordinator in its grievance procedures adopted pursuant to this Agreement.
- c. ADEM will ensure that the Non-Discrimination Coordinator's updated responsibilities include the following:
 - i. Providing information to individuals internally and externally regarding their right to services, aids, benefits, and participation in any ADEM program or activity without regard to their race, national origin, color, sex, disability, age or prior opposition to discrimination;
 - ii. Providing notice of ADEM's formal and informal grievance processes and the ability to file a discrimination complaint with ADEM;
 - iii. Establishing grievance policies and procedures or mechanisms (e.g., an investigation manual) to ensure that all discrimination complaints filed with ADEM under federal non-discrimination statutes are processed promptly and appropriately. Any policy, procedure, or mechanism must include meaningful access for limited-English proficient individuals and individuals with disabilities to ADEM programs and activities;
 - iv. Ensuring the tracking of all discrimination complaints filed with ADEM under federal non-discrimination statutes, including any patterns or systemic problems;
 - v. Conducting a semiannual review of all formal and informal discrimination complaints filed with the ADEM Non-Discrimination Coordinator under federal nondiscrimination statutes and/or any other complaints independently investigated by

ADEM in order to identify and address any patterns or systemic problems;

- vi. Informing and advising ADEM staff regarding ADEM's obligations to comply with federal nondiscrimination statutes and serve as a resource on such issues;
 - vii. Ensuring that complainants are updated on the progress of their discrimination complaints filed with ADEM under federal non-discrimination statutes and are promptly informed as to any determinations made;
 - viii. Periodically evaluating the efficacy of ADEM's efforts to provide services, aids, benefits, and participation in any ADEM program or activity without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination;
 - ix. Ensuring appropriate training in the formal and informal processes available to resolve complaints filed under federal non-discrimination statutes; and,
 - x. Providing or procuring appropriate services to ensure ADEM employees are appropriately trained on ADEM non-discrimination policies and procedures, as well as the nature of the federal non-discrimination obligations.
- d. The Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (e.g. serving as the Non-Discrimination Coordinator as well as ADEM legal advisor or representative on civil rights issues);
 - e. Within 30 days of the effective date of this Agreement, ADEM will have designated a Non-Discrimination Coordinator and provided appropriate public notice of such as specified above.
 - f. Within 30 days of appointment of a Non-Discrimination Coordinator, ADEM will forward to EPA proof that the responsibilities have been included in the incumbent's statement of duties and that the incumbent has accepted the duties.
4. *Plan to Ensure Access to Programs and Activities by Persons with Limited English Proficiency*
- a. ADEM will develop, publish, and implement written procedures to ensure meaningful access to all of ADEM's programs and activities by all

persons, including access by limited-English proficient individuals and individuals with disabilities at no cost to those individuals.

- b. ADEM will conduct the appropriate analysis described in EPA's LEP Guidance found at 69 FR 35602 (June 25, 2004) and <http://www.lep.gov> to determine what language services it may need to provide to ensure that limited-English proficient individuals can meaningfully participate in the process. ADEM should develop a language access plan consistent with the details found in EPA's training module for LEP. [HYPERLINK "<http://www.epa.gov/civilrights/lepaccess.htm>"]
- c. ADEM will make all reasonable efforts to ensure that all "vital"¹ information is available to LEP persons in a language they can understand. If it is not reasonable to translate an entire document, ADEM must ensure that any vital information contained within such a document will be translated.
- d. ADEM commits to having technical staff available to answer questions from the public about landfill-related permits via phone or e-mail and will answer any questions regarding permits in a language other than English through the timely use of a qualified interpreter provided by ADEM. The contact information for such staff will be placed on ADEM's facility-specific webpage, and on all public notices and fact sheets.
- e. Within 60 days of the effective date of this Agreement, ADEM will forward to EPA a final draft of its written procedures to ensure meaningful access to all of ADEM's programs and activities by all persons, including access by limited English proficient individuals and individuals with disabilities. ADEM will also ensure that these procedures identify different mechanisms for translation services (currently ADEM utilizes Google translate which is not adequate), and that ADEM's service area is aware that language services are available. EPA will review the draft procedures and provide any comments within 60 days of receipt.

5. *Plan to Ensure Access to Programs and Activities by Persons with Disabilities*

- a. ADEM will provide at no cost appropriate auxiliary aids and services including, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the

¹ Whether a document (or the information it disseminates or solicits) is "vital" may depend on the importance of the program, information, encounter, or service involved, and the consequence to individual with the LEP if the information question is not provided accurately or in a timely manner. (See EPA's 2004 *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Individuals* at <https://www.gpo.gov/fdsys/pkg/FR-2004-06-25/pdf/04-14464.pdf>)

benefits, activities, programs and services provided by ADEM in a timely manner and in such a way as to protect the privacy and independence of the individual.

- b. Within 60 days of the effective date of this Agreement, ADEM will forward to EPA a final draft of its written procedures to ensure meaningful access to all of ADEM's programs and activities by individuals with disabilities. EPA will review the draft procedures and provide any comments within 60 days of receipt.

6. *Training*

- a. Within 120 days after the effective date of the deliverables identified in this Agreement, including fulfilling the requirements for a Non-Discrimination Coordinator, Non-Discrimination Notice, Grievance Procedures, and Public Participation Process/Procedures, ADEM will certify that all appropriate staff have been trained on these processes and procedures and on the nature of the federal non-discrimination obligations.
- b. Within 90 days after execution of this Agreement, ADEM will forward to EPA the plan that ADEM will put in place to ensure that such training is a routine part of annual or refresher training to appropriate staff.

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CHECK LIST FOR PROCEDURAL SAFEGUARDS FOR RECIPIENTS FEDERAL NON-DISCRIMINATION OBLIGATIONS

Federal Non-Discrimination Statutes: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 13 of Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972.²

Item	Yes & Supporting Documentation	Not Yet	Checking
Notice of Non-Discrimination under the Federal Non-Discrimination Statutes³			
See attachment for recommended text of notice			
The non-discrimination notice is posted:			
• in a prominent location in your offices and facilities			
• prominently on your website			
• in any publications			
Grievance Procedures for Complaints filed under the Federal Non-Discrimination Statutes⁴			
A grievance procedure that:			
• Clearly identifies the Non-Discrimination Coordinator, including contact information			
• Explains the role of the Non-Discrimination Coordinator relative to the coordination and oversight of the grievance procedures			
• States who may file a complaint under the procedures			
• Describes which formal and informal processes are available, and the options for complainants in pursuing either			
• Explains that an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination statutes will be conducted			

² 40 C.F.R. § 7.85(g)

³ 40 C.F.R. § 7.95(a).

⁴ 40 C.F.R. § 7.90.

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Item	Yes & Supporting Documentation	Not Yet	Checking
<ul style="list-style-type: none"> States that the preponderance of the evidence standards will be applied during the analysis of the complaint 			
<ul style="list-style-type: none"> Contains assurances that retaliation is prohibited⁵ and that claims of retaliation will be handled promptly if it occurs 			
<ul style="list-style-type: none"> States that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process⁶ 			
<ul style="list-style-type: none"> Is published in print in general publications distributed to the public 			
Non-Discrimination Coordinator⁷			
At least one Non-Discrimination Coordinator to ensure compliance with the federal non-discrimination statutes			
Non-Discrimination Coordinator or other individual responsible for:			
<ul style="list-style-type: none"> Providing information internally and externally regarding rights to services, aids, benefits, and participation without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination 			
<ul style="list-style-type: none"> Providing notice of your Agency's formal and informal grievance processes and the ability to file a discrimination complaint 			
<ul style="list-style-type: none"> Establishing grievance policies and procedures or mechanisms (e.g., an investigation manual) 			
<ul style="list-style-type: none"> Tracking all complaints filed with your Agency under federal non-discrimination statutes including any patterns or systemic problems 			
<ul style="list-style-type: none"> Semiannual reviews of all complaints filed with your Agency under federal non-discrimination statutes in order to identify and address any patterns or systemic problems 			

⁵ 40 C.F.R. § 7.100.

⁶ Whether OCR considers complaint investigations and resolutions to be "prompt" will vary depending on the complexity of the investigation and the severity and extent of the alleged discrimination. For example, the investigation and resolution of a complaint involving multiple allegations and multiple complainants likely would take longer than one involving a single allegation of discrimination and a single complainant.

⁷ 40 C.F.R. § 7.85(g).

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<ul style="list-style-type: none"> Appropriate training for your Agency's employees on your Agency's non-discrimination policies and procedures and obligations to comply with federal non-discrimination statutes 			
<ul style="list-style-type: none"> Updating complainants on the progress of their complaints filed with your Agency under federal non-discrimination statutes and any determinations made 			
<ul style="list-style-type: none"> Periodic evaluations of the efficacy of your Agency's efforts to provide services, aids, benefits, and participation in any of your Agency's programs or activities without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination 			
Public Participation			
Written and published public participation process/procedures that provide that when your Agency prepares a public participation plan for a specific action, it will include:			
<ul style="list-style-type: none"> A description of the community (including demographics, history, and background) 			
<ul style="list-style-type: none"> A contact list of Agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet 			
<ul style="list-style-type: none"> A list of past and present community concerns (including any complaints filed under the federal non-discrimination statutes) 			
<ul style="list-style-type: none"> A detailed plan of action (outreach activities) your Agency will take to address concerns 			
<ul style="list-style-type: none"> A contingency plan for unexpected events 			
<ul style="list-style-type: none"> Location(s) where public meetings will be held (consider the availability and schedules of public transportation) 			
<ul style="list-style-type: none"> Contact names for obtaining language assistance services for limited-English proficient persons, including, translation of documents and/or interpreters for meetings 			

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Item	Yes & Supporting Documentation	Not Yet	Checking
<ul style="list-style-type: none"> Appropriate local media contacts (based on the culture and linguistic needs of the community) 			
<ul style="list-style-type: none"> Location of the information repository 			
Access To Programs And Activities by Persons with Limited English Proficiency			
Has your Agency conducted an appropriate analysis described in OCR's LEP Guidance found at 69 FR 35602 (June 25, 2004) and http://www.lep.gov to determine what language services it may need to provide to ensure that individuals with limited-English proficiency can meaningfully participate in the process?			
Has your Agency developed a language access plan consistent with the details found in OCR's training module for LEP http://www.epa.gov/civilrights/lepaccess.htm ?			
Does your Agency have written and published procedures that:			
<ul style="list-style-type: none"> Ensure meaningful access to all of your Agency's programs and activities to persons with limited-English proficiency and individuals with disabilities 			
<ul style="list-style-type: none"> Make communities you serve aware that foreign language services are available 			
<ul style="list-style-type: none"> Translate standardized documents 			
<ul style="list-style-type: none"> Provide for simultaneous oral interpretation of live proceedings such as town hall meetings or public hearings 			
Access To Programs And Activities by Persons with Disabilities			
Does your Agency have written and published procedures to ensure to provide access to your programs, services, and activities for individuals with disabilities that:			
<ul style="list-style-type: none"> Provides at no cost appropriate auxiliary aids and services including, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs and services provided by your 			

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Agency in a timely manner and in such a way as to protect the privacy and independence of the individual			
<ul style="list-style-type: none">Ensures that your Agency's facilities and non-Agency facilities utilized by your Agency (<i>e.g.</i>, if your Agency holds a public hearing at a school) are physically accessible for individuals with disabilities			
<ul style="list-style-type: none">Makes communities you serve aware that services for individuals with disabilities are available			

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ATTACHMENT – NOTICE OF NON-DISCRIMINATION RECOMMENDED TEXT

[Agency Name] does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, as required by applicable laws and regulations.

[Insert name and title of Non-Discrimination Coordinator] is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

If you have any questions about this notice or any of [Agency Name]'s non-discrimination programs, policies or procedures, you may contact:

[Insert name and title of Non-Discrimination Coordinator]

[Insert Agency Name and Address]

[Insert phone number of Non-Discrimination Coordinator]

[Insert email address of Non-Discrimination Coordinator]

If you believe that you have been discriminated against with respect to a [Agency Name] program or activity, you may contact the [insert title of Non-Discrimination Coordinator] identified above or visit our website at [insert] to learn how and where to file a complaint of discrimination.